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SUBJECT: AZERBAIJAN: PARLIAMENT WANTS A MOLE IN EVERY
FOREIGN COMPANY

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11. SUMMARY: On August 10, 2009, the American Chamber of Commerce in Baku held an emergency meeting to discuss a law passed by Parliament on June 22, 2009, which requires that deputies of foreign companies in Azerbaijan shall be citizens of Azerbaijan chosen jointly by the foreign company and the GOAJ. Business leaders are concerned that this is a plot by the GOAJ to place a high-level mole in every foreign company in Azerbaijan, and that the deputy's reporting would be used to help well-placed local competitors gain an edge over foreign companies. If signed by President Aliyev, this law would violate the U.S.-Azerbaijan Bilateral Investment Treaty. AmCham plans to write President Aliyev and ask him not to sign this legislation, and AmCham will ask the U.S. Embassy (among others) to sign this letter. There seems to be confusion within the GOAJ on what has happened and what may happen next. The full text of this legislation appears at the end of this cable. End Summary.

12. A Chemonics/ USAID representative at the meeting (John Corrigan) listed two problems the GOAJ would have with the draft legislation if President Aliyev signed it into law: first, he says it conflicts with Azerbaijani law, which says that foreign and domestic investors shall be "granted equal legal regime." The law passed by parliament June 22 specifically singles out foreign companies for special treatment. Business representatives said this argument might not be persuasive to President Aliyev, as he could simply order local businesses to also hire deputies chosen by the GOAJ. Second, Corrigan opined that this law would complicate Azerbaijan's WTO accession. COMMENT: If the GOAJ did impose such a requirement on local companies (which certainly cannot be ruled out), we expect it would be selectively enforced within companies that fall out of political favor or in companies that attempt to compete against well-connected monopolists. We are not certain that the GOAJ is sufficiently serious about WTO accession now that the latter point would much affect their calculations. End Comment.

13. There seems to be confusion within the GOAJ on what exactly has been decided, and what the next steps are. International Finance Corporation Project Manager Boris Divjak says that Zaur Gasimov, head of the Entrepreneurship Department at the Ministry of Economic Development, "made it clear that the legal motion has not originated from the MoED and distanced himself clearly, saying that he finds this to be in breach of various other investment climate and FDI initiatives they are pursuing ... Zaur claims that the draft amendment went through only one reading in the parliament of the required four and that it is a long way away from even being considered for the Presidential signing."

¶4. On the other hand, OSCE Economic and Environmental Officer Robert Zahn says that according to the International Relations Department of the Parliament, "the amendments were adopted after the first reading in Parliament on 30 June 2009 and were submitted to the President for signature" and that "amendments require only one reading."

¶5. In a letter to AmCham Executive Director Nargiz Nasrullayeva-Muduroglu, Chingiz Asadullayev, the Deputy Chairman of the Parliament's Economic Policy Commission, writes: "the changes to the law on entrepreneurship have been discussed and adopted at Parliament's session and will come into force after they get signed by the President and get published in the official state newspaper."

¶6. If signed into law by President Aliyev, the draft legislation would bring Azerbaijan into conflict with its commitments in the U.S.-Azerbaijan Bilateral Investment Treaty. Specifically, Article II, Section 1 states that "...each Party shall accord treatment no less favorable than it accords, in like situations, to investments in its territory of its own nationals or companies (hereinafter 'national treatment') or to investments in its territory of nationals or companies of a third country (hereinafter 'most favored nation treatment'). Each Party shall ensure that its state enterprises, in the provision of their goods or services, accord national and most favored nation treatment to covered investments." Furthermore, Article VII, Section 1(a) states "Subject to its laws relating to the entry and sojourn of aliens, each Party shall permit to enter and to remain in its territory nationals of the other Party for the purpose of establishing, developing, administering or advising on the operation of an investment to which they, or a company of the other Party that employs them, have

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committed or are in the process of committing a substantial amount of capital or other resources."

¶7. AmCham has said they will draft two letters to President Aliyev urging him not to sign this draft legislation into law. The first copy will be sent from the three major business groups in Baku: AmCham, the British Business Group (BBG), and the German-Azerbaijan Business Association (DAWF).

AmCham proposes that the second copy would be signed by IFIs as well as the Embassies of Norway, France, Italy, the European Union, and the United States.

¶8. COMMENT: Considering the clear contradictions between this legislation and Azerbaijan's obligations under the U.S.-Azerbaijan Bilateral Investment Treaty, Embassy anticipates being able to support the AmCham's letter to President Aliyev. Based on the content of AmCham's letter and the atmospherics of the situation as it develops, it may be appropriate for the Embassy or Washington to join with an additional letter to the President. End Comment.

¶9. Below is the full text of "the Law on Making Changes to the Law on Entrepreneurship Activity," as translated from Azerbaijani to English by Chemonics: "Deputies of chiefs of branches and representative offices of foreign legal entities with foreign citizens or foreign legal entities as founders, as well as with more than 51 percent of their paid-in capital or shares owned by foreign citizens or foreign legal entities should be citizens of the Republic of Azerbaijan and nomination of these deputies should be agreed upon by relevant executive body of the Republic. State registration of those branches and representative offices is only allowed after nomination of their deputy chiefs is agreed upon. At least 90 percent of employees of branches and representatives of foreign citizens or foreign legal entities working in the fields of agriculture, hunting and forestry, fish breeding, mining, processing industry, electricity, gas and water production and distribution, construction, wholesale and retail sale, renovation of vehicles, domestic appliances and

personal belongings, hotel and restaurant services, transportation, warehousing and communication, financial activity, real estate operations, lease and consumer services, education, health and social services, also other public utility and, social and personal services, as well as of foreign legal entities owned by foreign citizens or foreign legal entities which own 51 percent of shares or capital charter should be citizens of the republic of Azerbaijan."

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